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No. 80-2035

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ELECTRONIC DATA SYSTEMS CORPORATION IRAN,
Petitioner,

v.

THE SOCIAL SECURITY ORGANIZATION OF THE GOVERNMENT OF IRAN, THE MINISTRY OF HEALTH AND WELFARE OF THE GOVERNMENT OF IRAN, THE GOVERNMENT OF IRAN, DONALD T. REGAN, THE SECRETARY OF THE TREASURY OF THE UNITED STATES OF AMERICA, AND THE UNITED STATES OF AMERICA,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit Before Judgment

BRIEF FOR RESPONDENT ISLAMIC REPUBLIC OF IRAN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI AND MOTION FOR EXPEDITED CONSIDERATION AND APPENDIX

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BRIEF FOR RESPONDENT ISLAMIC REPUBLIC OF IRAN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI AND MOTION FOR EXPEDITED CONSIDERATION

QUESTION PRESENTED

Whether the case before the appeals court involves an attachment of Iranian assets that are subject to transfer out of the United States by July 19, 1981, as required by Executive Orders and federal regulations.

STATEMENT

Respondent Islamic Republic of Iran (the "Government of Iran"), by its co-counsel, hereby submits its opposition to the petition for writ of *certiorari* and motion for expedited consideration. Co-counsel also represents the Government of Iran as defense counsel in all cases pending in United States courts, other than this case. This case is one of the few among over 450 cases against the Government of Iran involving a prejudgment attachment that has not been nullified by the Executive. Our argument underscores the Government of Iran's concern that the writ should not issue with respect to this case.

Petitioner EDSCI obtained a prejudgment attachment of some $20 million in funds of respondent Islamic Republic of Iran in the Southern District of New York on June 13, 1979. Petition at 7. On November 14, 1979, former President Carter issued Executive Order No. 12,170, 44 Fed. Reg. 65,729 (1979), which blocked Iranian Government property subject to United States jurisdiction.[1] Thereafter the Department of the Treasury promulgated regulations to implement that order. 31 C.F.R. §§535.101-904 (1980). The regulations permitted prejudgment attachment, but prohibited the delivery of blocked property to "any court, marshall, sheriff or similar entity." 31 C.F.R. §535.418 (1980) (App. 15a). The regulations also prohibited the entry of any judgment in judicial proceedings "with respect to property" of the Government of Iran. 31 C.F.R. §535.504, *as amended* (App. 15a). Nevertheless, the United States District Court for the Northern District of Texas issued a judgment against respondents on May 9, 1980. Petition at 1.

On January 19, 1981, the United States adhered to two Declarations of the Government of Algeria.[2] The General

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[1] Copies of certain Executive Orders and regulations not provided by EDSCI are included in the Appendix attached hereto.

[2] These are the "Declaration of the Government of the Democratic and Popular Republic of Algeria," Jan. 19, 1981 (the "General Declaration") and the "Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the

(footnote continues)

Declaration provides for the termination of the litigation in the United States courts and the nullification of judicial process, including attachments. The United States specifically agreed:

> to terminate all legal proceedings in the United States courts involving claims of United States persons and institutions against Iran and its enterprises, *to nullify all attachments and judgments obtained therein,* [and] to prohibit further litigation based on such claims . . . .

General Declaration, General Principle B (emphasis added) (Petitioner's App. 134.)

In addition to, and independently of, the above commitment, the General Declaration requires the return of all Iranian assets within United States jurisdiction. General Declaration, General Principle A. Paragraphs 4 through 9 of the General Declaration obligate the United States to bring about the immediate transfer of all gold bullion and other assets of Iran held in the Federal Reserve Bank, General Declaration, ¶4; the immediate transfer of all Iranian deposits and securities held in foreign branches of United States banks, *Id.* ¶5; and the immediate transfer of all financial assets and other property of Iran wherever located, *Id.* ¶¶8, 9. Additionally, all deposits and securities in domestic branches of United States banks are to be transferred within six months, by July 19, 1981. *Id.* ¶6. The United States is thus obligated to "bring about the transfer" or to "arrange for the transfer" of Iranian assets.[3] The General

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(footnote continued)

United States of America and the Government of the Islamic Republic of Iran," Jan. 19, 1981 (the "Claims Settlement Declaration"). (Petitioner's App. 133-47). References to documents included in Petitioner's Appendix are designated "Petitioner's App."

[3] The commitments to transfer assets in ¶¶4-9 of the General Declaration are conditioned upon certain events, all of which have occurred: certification by Algeria that the 52 American nationals have safely departed from Iran (¶9), adherence to the Declarations by the two Contracting States (¶¶ 6, 8, 9), the establishment of a security account with a Central Bank (the Bank of England has been designated) to fund the claims program (¶¶ 6, 7), and completion of escrow arrangements with the Central Bank (¶¶ 4, 5). The security account established by paragraph 7 is to be funded from the returned assets in the initial amount of $1 billion and subsequently maintained by Iran in an amount not less than $500 million.

Declaration established a security account to be funded from the returned assets in the initial amount of $1 billion and subsequently maintained by Iran so that the amount is not less than $500 million. General Declaration, ¶2 (Petitioner's App. 134-34).

In order to implement the two Declarations, ten Executive Orders were issued on January 19, 1981.[4] The Executive Orders, *inter alia,* revoke the license only for prejudgment attachments obtained *after* November 14, 1979, at 8:10 a.m. EST, and nullify only such attachments. The Executive Orders, in pertinent part, provide:

> All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation *after November 14, 1979, at 8:10 a.m. EST,* including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any

[4] Exec. Order No. 12, 276, 46 Fed. Reg. 7,913 (1981), authorizes certain escrow and depository agreements with the Bank of England (App. 2a); Exec. Order No. 12,277, 46 Fed. Reg. 7,915 (1981), directs the Federal Reserve Bank of New York to transfer Iranian funds to the escrow account at the Bank of England (App. 4a); Exec. Order No. 12,278, 46 Fed. Reg. 7,917 (1981), directs overseas branches of United States banks to transfer Iranian funds to the escrow account at the Bank of England (App. 7a); Exec. Order No. 12,279, 46 Fed. Reg. 7,919 (1981), directs any U.S. branch or office of any bank subject to U.S. jurisdiction holding Iranian funds to transfer those funds to the Federal Reserve Bank of New York for transfer to the escrow account at the Bank of England (Petitioner's App. 121); Exec. Order No. 12,280, 46 Fed. Reg. 7,921 (1981), directs persons holding Iranian funds to transfer those funds to the Federal Reserve Bank of New York for transfer to the escrow account at the Bank of England (App. 10a); and Exec. Order No. 12,281, 46 Fed. Reg. 7,923 (1981), directs persons holding Iranian property to transfer that property as directed by Iran (App. 12a). The remaining four Executive Orders are not pertinent to this case.

> such right, power, or privilege are hereafter barred from exercising the same.

(Emphasis added).[5]

On February 24, 1981, President Reagan issued Exec. Order No. 12,294, 46 Fed. Reg. 14,111 (1981) (Petitioner's App. 124), which ratifies Exec. Orders Nos. 12,276 through 12,285 of January 19, 1981, issued by former President Carter.[6]

Following ratification of former President Carter's actions by President Reagan, the Treasury Department amended the Iranian Assets Control Regulations to conform to the Executive Orders. Section 218 of the regulations, as amended, nullifies only attachments obtained *after* the November 14, 1979 blocking order. 31 C.F.R. §535.218(b), 46 Fed. Reg. 14,334, as amended, 46 Fed. Reg. 26,477 (1981) (Petitioner's App. 128). Assets subject to an attachment acquired before the November 14, 1979 blocking order are excepted from the transfer requirement:

> Any funds, securities or deposits subject to a valid attachment, injunction or other like proceeding or process *not affected by §535.218* need not be transferred as otherwise required by this section.

46 Fed. Reg. 26,477 (1981) (to be codified in 31 C.F.R. §§535.213, 535.214) (emphasis added) (Petitioner's App. 127). The regulations further provide that penalties will not be imposed for failure to transfer Iran's assets until "the Secretary of the Treasury determines that the authority of the United States to order these transfers has been the subject of a definitive legal ruling . . . . "46 Fed. Reg. 14,335 (1981).

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[5] This identical language is contained in five of the Executive Orders.

[6] It is Iran's position that all attachments, including those obtained prior to November 14, 1979, must be nullified pursuant to the Declarations. However, this dispute as to interpretation of the Declarations is properly presented only to the Arbitral Tribunal. Claims Settlement Declaration, Article VII, ¶4 (Petitioner's App. 145). For purposes of this case, the significant fact is that the United States has purported to nullify only attachments obtained *after* the November 14, 1979 blocking order.

SUMMARY OF ARGUMENT

Petitioner attempts to invoke this Court's discretionary exercise of review before judgment, on an expedited basis, with respect to a case that does not present any issue requiring immediate resolution. This case involves an attachment acquired before the executive blocking of Iranian Government property, and the Executive has not ordered that these assets be transferred by July 19, 1981. Three federal courts of appeals have ruled in cases involving Iran's assets subject to return by July 19, that the President acted within his authority to order the return of Iran's assets. No conflict exists among the circuits. No urgency exists to resolve the issue whether the President has authority to settle claims of United States nationals, because the deadline for resolution of this issue is no earlier than January 19, 1982. Finally, because the Secretary of the Treasury has authority to determine whatever ruling is definitive, the need for a "definitive legal ruling" from the Court does not arise.

ARGUMENT

I. THIS CASE INVOLVES A "PRE-FREEZE" ATTACHMENT NOT SUBJECT TO THE TRANSFER ORDER AND THEREFORE DOES NOT PRESENT THE CRITICAL QUESTION AS TO EXECUTIVE AUTHORITY THAT WOULD JUSTIFY PREMATURE OR EXPEDITED REVIEW.

A review on writ of *certiorari* is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. Sup. Ct. R. 17. This petition should be denied because there are no special or important reasons for a grant of *certiorari* at this time. More importantly, the extraordinary review petitioner requests "before . . . rendition of judgment or decree [by the court of appeals]," 28 U.S.C. §1254(1)(1976), is made available only in matters of urgency and compelling importance:

> A petition for writ of *certiorari* to review a case pending in a federal court of appeals, before judgment is given in such court, will be granted only upon a showing that the case is of such imperative public importance as to justify the deviation from normal appellate practice and to require immediate settlement in this Court.

Sup. Ct. R. 18 (citations omitted). The issues actually presented in this case are simply not so "imperative" as to require immediate review by this Court. The same reasons militate against expedited consideration of this matter.

EDSCI's prejudgment attachment was obtained on June 13, 1979, five months before President Carter asserted control over Iranian Government property subject to United States jurisdiction by his blocking order of November 14, 1979. Petition at 7. The Executive has not directed the transfer of Iranian Government property subject to a "pre-freeze" attachment, as EDSCI admits. Petition at 9 n.5. This critical fact renders this case totally inappropriate as a "test case" for the Executive transfer of Iranian Government property which must occur before July 19, 1981.

The issue presented by the transfer order is whether the Executive has the statutory and constitutional authority to nullify attachments obtained *after* Executive assertion of control over the property of a foreign sovereign and to direct the transfer of that property. This case does not present this issue because it involves a "pre-freeze" attachment and because the attached property is excepted from the transfer order. Thus, the EDSCI case does not present the issue critical to the July 19, 1981 transfer order.

By the same token, because this case does not involve Iranian Government property ordered to be transferred by July 19, 1981, no need has been demonstrated to decide any of the issues presented by the petition before that date, and therefore no grounds exist for the extraordinary request for *certiorari* before judgment or for expedited consideration and briefing.

Although EDSCI contends that "its Order of Attachment is just as effectively negated as are those where funds are transferred abroad," the fact remains that this case does not present the issue critical to the July 19, 1981 transfer. Petition at 9 n.5.

The two circuits which have considered the issue have held that the International Emergency Economic Powers Act, 50 U.S.C. §§1701-06 (Supp. III 1979), empowers the President to nullify attachments obtained after the November 14, 1979 blocking order and to direct the transfer of property subject only to such "post-freeze" attachments. In *Chas. T. Main International, Inc. v. Khuzestan Water and Power Authority,* No. 80-1027 (1st Cir. May 22, 1981), the First Circuit held:

> Since Congress has authorized the President to block Iranian assets, nullify attachments of such assets obtained after the blocking order took effect, and transfer the assets out of the United States, the President lacked authority for these actions only if "the Federal Government as an undivided whole lacks [such] power . . . . "

Typescript op. at 12 (Supp. App. Tab 4) (quoting *Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579, 636-37 (1952)).[7] The First Circuit emphasized that the attachments implicated by the July 19, 1981 transfer were obtained after the November 14, 1979 blocking order:

> By the time Main acted, the assets were within the President's control, under the umbrella of his IEEPA powers. Once the blocking order was in place, we do not believe that Main could obtain such an interest in the blocked assets as would later hamper the President in disposing of them . . . . In the circumstances, we think Main could acquire no greater "property interest" in the blocked funds—through "judicial remedies" or otherwise—than its conditional license and the regulations allowed.

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[7] References to slip opinions supplied to the Court by EDSCI are to "Supp. App. Tab_____".

Typescript op. at 10 (Supp. App. Tab 4). Similarly, in *American International Group, Inc. v. Islamic Republic of Iran*, No. 80-1779 (D.C. Cir. May 22, 1981) (Supp. App. Tab 5) ("*AIG*"), the D.C. Circuit held:

> The attachments and other forms of preliminary and provisional relief intended to secure the claims of appellees *pendente lite* were obtained after the President had exercised his power under the International Emergency Economic Powers Act, 50 U.S.C. §§1701 *et seq.*, to freeze Iranian assets within this country, and they were authorized under the Iranian Assets Control Regulations, 31 C.F.R. Part 535 (1980). Those authorizations were expressly made revocable, *see* 31 C.F.R. §535.805 (1980), and they have been revoked, *see* 46 Fed. Reg. 14334 (1981) (to be codified at 31 C.F.R. §535.218).

Judgment at 2 (Supp. App. Tab 5).

Although the concurring opinion in *Chas T. Main* reasoned differently as to the source of the President's authority to suspend the claims against Iran, no difference of opinion arose as to the authority to nullify "post-freeze" attachments and transfer Iranian property:

> I agree with the court's disposition of this case and with its opinion insofar as it concerns Iran's assets—the main issue from both a practical commercial, and a foreign affairs, point of view.

Typescript op. at 1 (concurring opinion).

Another circuit denied an emergency motion for a stay pending appeal of an order vacating an attachment "in light of the broad executive [statutory] powers." *Blount Brothers Corp. v. The Government of Iran*, No. 81-3256 (9th Cir. June 1, 1981) (App. 17a).

The district courts also have held uniformly that the IEEPA empowers the President to nullify "post-freeze" attachments and transfer Iranian Government property. *Blount Brothers Corp. v. The Government of Iran*, No. C79-1442V,

(W.D. Wash. May 11, 1981) slip op. at 4-5 (App. 21a-22a); *Security Pacific National Bank, v. The Government of Iran,* No. 79-4661 (C.D. Cal. Apr. 30, 1981), slip op. at 31-32 (Supp. App. Tab 2); *Unidyne Corporation v. The Government of Iran,* No. 80-1029-A (E.D. Va. Mar. 30, 1981), slip op. at 5 (Supp. App. Tab 1). There is no "chaotic disarray of conflicting results" on this issue. Petition at 13. And this is the only issue which must be decided before July 19, 1981.

The issue of the Executive's authority to nullify attachments obtained after a blocking order was settled by this Court in *Orvis v. Brownell,* 345 U.S. 183 (1953). The First Circuit found *Orvis* controlling:

> The clear import of *Orvis* is that Main's injunction and attachments, obtained pursuant to a conditional Treasury Department license subsequent to the President's "freeze" of Iranian assets by blocking order, do not constrain the President in exercising his express powers under IEEPA to nullify non-Iranian interests in the assets and transfer them out of the country. Similar to *Orvis,* "the question is not whether a lien, concededly valid because obtained prior to the freezing order, may be 'annulled' by the [President], but rather whether the freezing order prevented the subsequent acquisition, by attachment, of such a property interest as the [President] would have to recognize . . . . " *Id.* at 188. As in *Orvis,* the answer is in the affirmative.

Chas T. Main, typescript op. at 11-12. The district courts addressing this issue also found *Orvis* controlling. *Security Pacific,* slip op. at 32, 34 (Supp. App. Tab 2); *Blount Brothers,* (W.D. Wash.), typescript op. at 5 (App. 23a).[8] Thus, with respect to the issue of nullification of "post-freeze" attachments and transfer of Iranian Government property subject to such attachments, no unsettled question is presented for this Court to resolve. And even if there were, this case does not present that issue.

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[8] The district court in *Unidyne Corp.* relied upon *United States v. Pink,* 315 U.S. 203 (1942). Slip op. at 4 (Sup. App. Tab 1).

If this Court were to grant this petition and motion, a decision on EDSCI's appeal would not resolve the issue of the Executive's authority to nullify "post-freeze" attachments and to transfer Iranian Government property out of the United States. The Court's decision would not provide the "definitive legal ruling" which EDSCI claims is still needed, despite the application of *Orvis* to the executive action by the First Circuit.

II. THE ISSUE OF THE PRESIDENT'S AUTHORITY TO SETTLE PETITIONER'S CLAIM DOES NOT PROVIDE A COMPELLING REASON FOR PREMATURE OR EXPEDITED REVIEW.

The separate issue of whether the President possesses the constitutional and statutory authority to settle claims of U.S. nationals against a foreign sovereign during a crisis in the international relations of the United States and to suspend further litigation in U.S. courts based on those claims also does not require the extraordinary review sought here. Immediate review of the district court's ruling, prior to a ruling by the court of appeals, is unnecessary where no deadline is imminent.

As petitioner properly points out, the Algerian Declarations require claims of U.S. nationals to be presented to the Tribunal by January 19, 1981, or six months after the President of the Tribunal is appointed, whichever is later. Claims Settlement Declaration, Art. III, ¶4 (A-144); Petition at 9. Thus, petitioner has at least until January of next year to seek review of any ruling issued by the court of appeals.[9] It is quite possible that this Court already will have reviewed this issue in the context of one of the decisions of courts of appeals noted in

[9] In addition, although the Algerian Declarations state that claims are to be excluded from the jurisdiction of all courts upon filing with the Tribunal, the United States has indicated that if the Tribunal refuses to hear a claim, the United States interprets the Declarations as not requiring the Tribunal to exercise jurisdiction and the United States will not prohibit further litigation on that claim in United States courts. Although failing to prohibit further litigation on such claims may constitute a breach of the Declarations, and the Government of Iran expressly reserves its right to seek damages for any such breach before the Tribunal, petitioner cannot claim that it will suffer any harm from being required to file its claim with the Tribunal.

the petition long before next January. If petitioner expects that this case provides a definitive ruling for the other litigation involving Iran, certainly this Court's decision in one of the other cases also should provide a definitive ruling that would be applicable to petitioner's case, as well.

One factor often relied on to substantiate the need for a writ of *certiorari* is a demonstrated conflict among courts of appeals. Petitioner has not demonstrated that there is any conflict among the courts of appeals. All of courts of appeals to address the issue have upheld the President's authority to suspend litigation involving claims of U.S. nationals against Iran. Inasmuch as the District of Columbia Circuit has not issued its opinion in *AIG,* it is unclear how petitioner could contend a conflict exists with the decision of the First Circuit in *Chas T. Main,* especially considering that the holdings of the two courts are essentially the same.

In an attempt to create a conflict, petitioner refers to the one court which has ruled contrarily, the *district* court herein,[10] and petitioner attempts to establish that a conflict exists in the reasoning underlying the results reached by the various courts to address these issues. Petition at 19-20. Neither of these attempts succeeds. One contrary holding of one district court does not create a conflict in the circuits, and different reasoning used by various district court judges or by court of appeals judges on the same case completely fails to meet such a standard. If the Fifth Circuit Court of Appeals is allowed to address the issue, as normal appellate procedure provides, that court may well also issue an opinion upholding the President's authority, thereby also avoiding any possibility of conflict. In the absence of compelling reasons therefor, this Court should refuse to provide the extraordinary review and expedited consideration requested by petitioner.

A further flaw in petitioner's logic is that a ruling on the issues presented by this case may well not be applicable to the

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[10] Contrary to petitioner's assertion, Petition at 20, the district court in *Dresser Industries, Inc. v. Islamic Republic of Iran,* No. CA 80-1535-H (N.D. Tex. May 21, 1981), did not address the Algerian Declarations.

vast majority of suits based on claims asserted against Iran because of the unique procedural posture of this case. The facts of this case cannot generate the "definitive ruling" petitioner so avidly seeks and which petitioner contends is necessary for all of the litigation involving Iran. This is the only case of the over 450 suits against Iranian entities representing a final judgment entered upon a trial on the merits. The question of the President's authority to settle claims will unquestionably be challenged by petitioner in this case based in part on the claimed significance of that judgment upon a trial. In no other case against Iran or an Iranian entity have proceedings developed to this extent. Should the Court determine that either of these factors is relevant to the legality of the President's authority to settle claims, the ruling will be that much less of the "definitive ruling" petitioner claims this case would provide.

Petitioner has failed to demonstrate that this case satisfies the basic requirement for issuance of a writ of *certiorari*: the existence of "special and important reasons" to support issuance of the writ. Even if that standard had been met, petitioner cannot show that the "case is of such imperative public importance as to justify the deviation from normal appellate practice." The issues petitioner contends are raised by this case are also raised in at least two cases that have been decided finally by courts of appeals. Thus, if an immediate "definitive ruling" is required by this Court, at least two cases could appropriately be reviewed to resolve those issues.

This case, on the other hand, is inappropriate for review for a number of reasons. The issues petitioner claims warrant review are either not presented in this case, or they are not of such urgency as to justify a deviation from normal appellate practice. Finally, this case is of such unique character that it might not provide a ruling applicable to the vast majority of cases involving Iranian assets and claims against Iran. On these grounds, therefore, the petition and motion should be denied.

III. THE PETITION AND MOTION SHOULD BE DENIED BECAUSE THEY WILL NOT ADVANCE THE DETERMINATION OF A DEFINITIVE LEGAL RULING.

Petitioner's arguments in favor of granting *certiorari* based upon the need for a "definitive legal ruling" from this Court must be rejected for two reasons. First, the regulation of the Department of the Treasury requiring a "definitive legal ruling" requires neither that the ruling come from this Court nor that there be such a ruling on any issue other than the authority of the Executive to transfer Iran's assets. Second, even if a "definitive legal ruling" must be forthcoming from this Court, the factual circumstances of the instant suit make impossible a definitive ruling as to those assets which are to be transferred by July 19, 1981.

A. A Definitive Legal Ruling Need Not Come from This Court.

Petitioner is incorrect in asserting that "[a] definitive ruling . . . can only come from this Court." Petition at 13. The sole regulation which refers to a "definitive legal ruling" provides that the United States will not seek to impose sanctions on persons who do not transfer Iran's assets as required by the Executive Orders and regulations promulgated pursuant thereto "[u]ntil the Secretary of the Treasury determines that the authority of the United States to order these transfers has been subject of a definitive legal ruling." 46 Fed. Reg. 14,335 (1981) (to be codified in 31 C.F.R. §535.221(b)). As the plain language of the regulation indicates, the Secretary of the Treasury determines what constitutes a "definitive legal ruling." If the United States intended to defer sanctions until the Supreme Court had issued a ruling, the regulations could have provided, for example: "[u]ntil the Supreme Court determines the authority of the United States to order these transfers . . . . " The difference between what the regulation actually provides and what it could have provided cannot be characterized as an oversight. Rather, the regulation was drafted to provide the Secretary of the Treasury with discretion to determine when there has been and what constitutes a definitive legal ruling.

In addition, the regulation is clear that the "definitive legal ruling" requirement is applicable only to the issue of the Executive's authority to order the transfer of Iran's assets. Such issues as the authority of the Executive to settle claims or to nullify judgments, alluded to by petitioner, need not be the subject of a "definitive legal ruling" by this Court or any other court, particularly before the date scheduled for the transfer of Iran's assets.

Thus, a "definitive legal ruling" need not come from this Court and the ruling need only focus upon the return of Iran's assets. Every court of appeals which has been presented with the issue of the authority of the Executive to vacate prejudgment attachments and transfer Iran's assets and has issued a ruling thereon has upheld the exercise of power by the Executive.[11] Given the consensus of decisions among the courts of appeals, sufficient judicial support for the actions taken by the Executive exists for the Secretary of the Treasury to find that there has been a "definitive legal ruling" allowing the United States to order the transfer of Iran's assets.

B. The Facts of Petitioner's Suit Cannot Result in a Definitive Legal Ruling.

Petitioner's suit cannot serve as the basis for a "definitive legal ruling"—whether the ruling must come from this Court or any other court. This case involves an attachment obtained on June 13, 1979, whereas the Executive has attempted only to vacate those attachments which were obtained subsequent to the "freeze" order of November 14, 1979. The Department of the Treasury regulations provide, in part:

> All rights, powers and privileges relating to the property described in §§535.211, 535.212, 535.213,

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[11] The First Circuit's opinion is the most extensive opinion to date. The court upheld the power of the Executive to vacate the attachments on the basis of this Court's opinion in *Orvis v. Brownell*, 354 U.S. 183: "[a] presidential blocking order virtually identical to this [the November 14, 1979 blocking order] was held impervious to judicial attachment in *Orvis v. Brownell* . . . ." *Chas T. Main*, typescript op. at 10. Therefore, this Court already has issued a "definitive legal ruling" on the authority of the Executive to vacate attachments against blocked assets.

> 535.214 and 535.215 and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation *after November 14, 1979 at 8:10 a.m., EST,* including those derived from §535.504, other than rights, powers and privileges of the Government of Iran and its agencies, instrumentalities and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power or privilege are hereafter barred from exercising the same.

46 Fed. Reg. 14,334 (1981) (to be codified in 31. C.F.R. §535.218(b)) (emphasis added). Sections 535.213 and 535.214 contain a provision stating: "Any funds, securities or deposits subject to a valid attachment, injunction or other like proceeding or process not affected by §535.218 need not be transferred as otherwise required by this section." 46 Fed. Reg. 26,477 (1981) (to be codified in 31 C.F.R. §§535.213(c), 535.214(c)). Similarly, section 535.215 provides: "Any properties subject to a valid attachment, injunction or other like proceeding or process not affected by §535.218 need not be transferred as otherwise required by this section." 46 Fed. Reg. 26,477 (1981) (to be codified in §535.215(b)).[12]

The Treasury Department regulations purport neither to vacate petitioner's attachment, nor to require the transfer by July 19, 1981, of the attached assets. Because the "definitive-legal-ruling" regulation only governs those assets which are to be transferred by July 19, 1981, petitioner has not presented a case which could provide a "definitive legal ruling."

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[12] The assets described in 46 Fed. Reg. 14,333 (1981) (to be codified in 31 C.F.R. §§535.211, 535.212), were transferred to Iran on signing of the Algerian Declarations, and are no longer pertinent.

CONCLUSION

Based on the foregoing the petition for writ of *certiorari* and motion for expedited consideration should be denied.

Respectfully submitted,

/s/ C. C. NETTESHEIM

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No. 80-2035

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ELECTRONIC DATA SYSTEMS CORPORATION IRAN,
Petitioner,

v.

THE SOCIAL SECURITY ORGANIZATION OF THE GOVERNMENT OF IRAN, THE MINISTRY OF HEALTH AND WELFARE OF THE GOVERNMENT OF IRAN, THE GOVERNMENT OF IRAN, DONALD T. REGAN, THE SECRETARY OF THE TREASURY OF THE UNITED STATES OF AMERICA, AND THE UNITED STATES OF AMERICA,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit Before Judgment

APPENDIX TO BRIEF FOR RESPONDENT ISLAMIC REPUBLIC OF IRAN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI AND MOTION FOR EXPEDITED CONSIDERATION

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Executive Order 12170,
44 Fed. Reg. 65,729 (1979)
Blocking Iranian Government Property

Pursuant to the authority vested in me as President by the Constitution and the Laws of the United States including the International Emergency Economic Powers Act, 50 U.S.C.A. sec. 1701 *et seq.*, the National Emergencies Act, 50 U.S.C. sec. 1601 *et seq.*, and 3 U.S.C. sec. 301,

I, JIMMY CARTER, President of the United States, find that the situation in Iran constitutes an unusual and extraordinary threat to the national security, foreign policy and economy of the United States and hereby declare a national emergency to deal with that threat.

I hereby order blocked all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States or which are in or come within the possession or control of persons subject to the jurisdiction of the United States.

The Secretary of the Treasury is authorized to employ all powers granted to me by the International Emergency Economic Powers Act to carry out the provisions of this order.

This order is effective immediately and shall be transmitted to the Congress and published in the FEDERAL REGISTER.

JIMMY CARTER

The White House,
November 14, 1979.

[Filed with the Office of the Federal Register, 9:16 a.m., November 14, 1979]

Executive Order 12276,
46 Fed. Reg. 7,913 (1981)
Direction Relating to Establishment of Escrow Accounts

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

1-101. The Secretary of the Treasury is authorized to enter into, and to license, authorize, direct, and compel any appropriate official and/or the Federal Reserve Bank of New York, as fiscal agent of the United States, to enter into escrow or related agreements with a foreign central bank and with the Central Bank of Algeria under which certain money and other assets, as and when directed by the Secretary of the Treasury, shall be credited by the foreign central bank to an escrow account on its books in the name of the Central Bank of Algeria, for transfer to the Government of Iran if and when the Central Bank of Algeria receives from the Government of Algeria a certification that the 52 U.S. diplomats and nationals being held hostage in Iran have safely departed from Iran. Such agreements shall include other parties and terms as determined by the Secretary of the Treasury to be appropriate to carry out the purposes of this Order.

1-102. The Secretary of Treasury is authorized to license, authorize, direct, and compel the Federal Reserve Bank of New York, as fiscal agent of the United States, to receive certain money and other assets in which Iran or its agencies, instrumentalities, or controlled entities have an interest and to hold or transfer such money and other assets, and any interest earned thereon, in such a manner as he deems necessary to fulfill the rights and obligations of the United States under the Declaration of the Government of the Democratic and popular Republic of Algeria dated January 19, 1981, and the escrow and related agreements described in paragraph 1-101 of this Order. Such money and other assets may be held in interest-bearing form and where possible shall be invested with or through the entity holding the money or asset on the effective date of this Order.

1-103. Compliance with this Executive Order, any other Executive Order licensing, authorizing, directing or compelling the transfer of the assets referred to in paragraphs 1-101 and 1-102 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.)* to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

JIMMY CARTER

The White House,
January 19, 1981.

[FR Doc. 81-2775 Filed 1-22-81; 9:17 am]

Executive Order 12277,
46 Fed. Reg 7,915 (1981)
Direction To Transfer Iranian Government Assets

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. The Federal Reserve Bank of New York is licensed, authorized, directed, and compelled to transfer to accounts at the Bank of England, and subsequently to transfer to accounts at the Bank of England established pursuant to an escrow agreement approved by the Secretary of the Treasury, all gold bullion, and other assets (or the equivalent thereof) in its custody, of the Government of Iran, or its agencies, instrumentalities or controlled entities. Such transfers shall be executed when and in the manner directed by the Secretary of the Treasury. The Secretary of the Treasury is also authorized to license, authorize, direct, and compel the Federal Reserve Bank of New York to engage in whatever further transactions

he deems appropriate and consistent with the purposes of this Order, including any transactions related to the return of such bullion and other assets pursuant to the escrow agreement.

1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

1-103. Compliance with this Order, any other Executive Order licensing, authorizing, directing, or compelling the transfer of the assets described in section 1-101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-105. This Order shall be effective immediately.

JIMMY CARTER

The White House,
January 19, 1981.

[FR Doc. 81-2776 Filed 1-22-81; 9:18 am]

Executive Order 12278,
46 Fed. Reg. 7,917 (1981)
Direction To Transfer Iranian Government Assets Overseas

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. Any branch or office of a United States bank or subsidiary thereof, which branch or office is located outside the territory of the United States and which on or after 8:10 a.m. E.S.T. on November 14, 1979 (a) has been or is in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities, or controlled entities, or (b) has carried or is carrying on its books deposits standing to the credit of or beneficially owned by such Government, agencies, instrumentalities, or controlled entities, is licensed, authorized, directed, and compelled to transfer such funds, securities, and deposits, including interest from November 14, 1979, at commercially reasonable rates, to the account of the Federal Reserve Bank of New York at the Bank of

England, to be held or transferred as directed by the Secretary of the Treasury. The Secretary of the Treasury shall determine when the transfers required by this section shall take place. The funds, securities and deposits described in this section shall be further transferred as provided for in the Declaration of the Government of the Democratic and Popular Republic of Algeria and its Annex.

1-102. Any banking institution subject to the jurisdiction of the United States that has executed a set-off on or after November 14, 1979, at 8:10 a.m. E.S.T. against Iranian funds, securities, authorized, directed, and compelled to cancel such set-off and to transfer all funds, securities, and deposits which have been subject to such set-off, or deposits referred to in section 1-101 is hereby licensed, including interest from November 14, 1979, at commercially reasonable rates, pursuant to the provisions of section 1-101 of this Order.

1-103. If the funds, securities, and deposits described in section 1-101 are not promptly transferred to the control of the Government of Iran, such funds, securities, and deposits shall be returned to the banking institutions holding them on the effective date of this Order and the set-offs described in section 1-102 shall be in force as if this Order had not been issued and the status of all such funds, securities, deposits and set-offs shall be *status quo ante.*

1-114. a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Sections 1-101 and 1-102 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in Sections 1-101 and 1-102 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. E.S.T., including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and

controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Sections 1-101 and 1-102 of this Order.

1-105. Compliance with this Order, any other Executive Order licensing, authorizing, directing, or compelling the transfer of the assets described in Sections 1-101 and 1-102 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-106. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-107. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-108. This Order shall be effective immediately.

JIMMY CARTER

The White House,
January 19, 1981.

[FR Doc. 81-2777 Filed 1-22-81; 9:18 am]

Executive Order 12280
46 Fed. Reg. 7,921 (1981)
Direction To Transfer Iranian Government Financial Assets Held by Non-Banking Institutions

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. Any person subject to the jurisdiction of the United States which is not a banking institution and is on the effective date in possession or control of funds or securities of Iran or its agencies, instrumentalities, or controlled entities is licensed, authorized, directed and compelled to transfer such funds or securities to the Federal Reserve Bank of New York to be held or transferred as directed by the Secretary of the Treasury.

1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which

derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

1-103. Compliance with this Executive Order, any other Executive Order licensing, authorizing, directing or compelling the transfer of the assets described in paragraph 1-101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

JIMMY CARTER

The White House,
January 19, 1981.

[FR Doc. 81-2779 Filed 1-22-81; 9:22 am]

Executive Order 12281,
46 Fed. Reg. 7,923 (1981)
Direction To Transfer Certain
Iranian Government Assets

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. All persons subject to the jurisdiction of the United States in possession or control of properties, not including funds and securities, owned by Iran or its agencies, instrumentalities, or controlled entities are licensed, authorized, directed and compelled to transfer such properties, as directed after the effective date of this Order by the Government of Iran, acting through its authorized agent. Except where specifically stated, the license, authorization, and direction does not relieve persons subject to the jurisdiction of the United States from existing legal requirements other than those based upon the International Emergency Economic Powers Act.

1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

1-103. Compliance with this Executive Order, any other Executive Order licensing, authorizing, directing or compelling the transfer of the assets described in paragraph 1-101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

1-106. This Order shall be effective immediately.

JIMMY CARTER

The White House
January 19, 1981.

[FR Doc. 81-2780 Filed 1-22-81; 9:23 am]

46 Fed. Reg. 14,334, 26,477 (1981)
(to be codified in 31 C.F.R. §§535.214, 535.215)

§535.214. Direction involving other financial assets in which Iran or an Iranian entity has an interest held by any person subject to the jurisdiction of the United States.

(a) Any person subject to the jurisdiction of the United States which is not a banking institution and is on January 19, 1981, in possession or control of funds or securities of Iran or its agencies, instrumentalities or controlled entities is licensed, authorized, directed and compelled to transfer such funds or securities to the Federal Reserve Bank of New York, as fiscal agent of the U.S. to be held or transferred as directed by the Secretary of the Treasury. However, such funds and securities need not be transferred until any disputes (not relating to any attachment, injunction or similar order) as to the entitlement of Iran and its entities to them are resolved.

(b) Transfers of funds, securities or deposits under paragraph (a) of this section shall be in accordance with the provisions of §535.221 of this part.

(c) Any funds, securities or deposits subject to a valid attachment, injunction or other like proceeding or process not affected by §535.218 need not be transferred as otherwise required by this section.

§535.215. Direction involving other properties in which Iran or an Iranian entity has an interest held by any person subject to the jurisdiction of the United States.

(a) All persons subject to the jurisdiction of the United States in possession or control of properties, as defined in §535.333 of this part, not including funds and securities owned by Iran or its agencies, instrumentalities or controlled entities are licensed, authorized, directed and compelled to transfer such properties held on January 19, 1981 as directed after that date by the Government of Iran, acting through its authorized agent. Except where specifically stated, this license, authorization and direction does not relieve persons subject to the jurisdiction of the United States from existing legal requirements other than those based upon the International Emergency Economic Powers Act.

(b) Any properties subject to a valid attachment, injunction or other like proceeding or process not affected by §535.218 need not be transferred as otherwise required by this section.

31 C.F.R. §535.418 (1980)

§535.418 Authorization of judicial proceedings under §535.504.

The general authorization for judicial proceedings contained in §535.504(a) includes pre-judgement attachment. However, §535.504(a) does not authorize payment of delivery of any blocked property to any court, marshal, sheriff, or similar entity, and any such transfer of blocked property is prohibited without a specific license. It would not be consistent with licensing policy to issue such a license.

[44 FR 75353, Dec. 19, 1979]

31 C.F.R. §535.504, *as amended*

§535.504 Certain judicial proceedings with respect to property of Iran or Iranian entities.

(a) Subject to the limitations of paragraphs (b) and (c) of this section, judicial proceedings are authorized with respect to property in which on or since the effective date there has existed an interest of Iran or an Iranian entity.

(b) This section does not authorize or license:

(1) The entry of any judgment or of any decree or order of similar or analogous effect upon any judment book, minute book, journal or otherwise, or the docketing of any judgment in any docket book, or the filing of any judgment roll or the taking of any other similar or analogous action.

(2) Any payment or delivery out of a blocked account based upon a judicial proceeding, nor does it authorize the enforcement or carrying out of any judgment or decree or order of similar or analogous effect with regard to any property in which Iran or an Iranian entity has an interest.

(c) A judicial proceeding is not authorized by this section if it is based on transactions which violated the prohibitions of this part.

(d) Property transferred into or held in the United States by Iran or an Iranian entity under a specific license which by its terms withdraws the authorization for pre-judgment attachment with respect to such property is excluded from the privileges of paragraph (a) of this section.

[44 FR 67617, Nov. 26, 1979, as amended at 44 FR 69650, Dec. 4, 1979]

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

No. 81-3256

DC# CV 79-1442 DV Western Washington (Seattle)

BLOUNT BROTHERS CORPORATION, individually and on behalf of B.C.J. DEVELOPMENT COMPANY; and B.C.J. DEVELOPMENT COMPANY,
Plaintiffs-Appellants,

vs.

THE GOVERNMENT OF IRAN, et al.,
Defendants-Appellees,

and

THE BOEING COMPANY,
Garnishee.

ORDER

Before: GOODWIN AND ANDERSON, Circuit Judges

The court, having considered appellants' emergency motion for stay pending appeal, orders the motion denied. In light of the questions respecting the validity of appellants' prejudgment writs under federal law, *see New England Merchants National Bank v. Iran Power Generation & Transmission Co.*, 502 F. Supp. 126 (S.D.N.Y. 1980), and in light of the broad executive powers conferred by the International Economic Emergency Powers Act, 50 U.S.C. §§1701-1706, appellants cannot be deemed to have a sufficient chance of success on appeal to warrant the relief requested in the absence of a showing that the balance of hardships decidedly favors such

relief. In the circumstances of this case, the potential hardship caused appellants by the vacating of their prejudgment writs fails to meet that standard.

The motions of the United States for leave to intervene on appeal and for summary affirmance are denied.

IN THE

United States District Court

WESTERN DISTRICT OF WASHINGTON

No. C79-1442V

BLOUNT BROTHERS CORP., et al.,
Plaintiffs,

vs.

THE GOVERNMENT OF IRAN, et al.,
Defendants,

and

THE BOEING COMPANY,
Garnishee.

MEMORANDUM OPINION

Having considered the garnishee's motion to vacate the writs of attachment and garnishment in this action, together with the memoranda and affidavits filed by counsel, the Court now finds and rules as follows:

1. This Court is the proper forum for consideration of these motions. The order partially staying the proceedings in this Court specifically excepted from the stay those proceedings relating solely to attachments and garnishments of the interests of the defendants. The order also recited that this stay was to be without prejudice to any claim by the garnishee touching upon the validity of any attachments. The motions by the garnishee are therefore properly before this Court.

2. In response to the taking of American hostages and other developments in Iran President Carter on November 14, 1979, issued an executive order declaring a national emergency

and blocking the transfer of all Iranian property within the jurisdiction of the United States. Exec. Order No. 12170, 44 Fed. Reg. 65,729 (1979). Thereafter plaintiffs filed this action, and this Court granted plaintiff's motion for a writ of attachment of property of defendant in this district and for a writ of garnishment directed to the garnishee. On January 3, 1980, the United States Marshal attached the interest of defendant in a certain Boeing 747 aircraft located at Paine Field within is judicial district.

3. The hostage controversy between the United States and Iran was resolved on January 19, 1981, with the signing of two declarations in the name of the Government of the Democratic and Popular Republic of Algeria. On the same day President Carter signed Executive Order 12281, one of a series of executive orders signed that day to implement the Declarations Exec. Order 12281, 46 Fed. Reg. 7923 (January 23, 1981). This executive order was subsequently ratified by President Reagan on February 24, 1981, by Executive Order 12,294. 46 Fed. Reg. 14111 (February 26, 1981).

Executive Order 12281 states in pertinent part:

> 1-101. All persons subject to the jurisdiction of the United States in possession or control of properties, not including funds and securities, owned by Iran or its agencies, instrumentalities, or controlled entities are licensed, authorized, directed and compelled to transfer such properties, as directed after the effective date of this Order by the Government of Iran, acting through its authorized agent.
>
> 1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise . . . are revoked and withdrawn.
>
> (b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m.

> EST . . . are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.
>
> (c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege, whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.
>
> 1-106. This Order shall be effective immediately.

4. It is the position of the garnishee, of defendant Iran, and of the United States, which filed a Statement of Interest with this Court, that Executive Order 12281, when issued, served to terminate plaintiffs' attachment. Plaintiffs contend that Executive Order 12281 did not have that effect because the President was without power to issue an order having that effect.

5. The President is, of course, vested by the Constitution with broad powers to conduct foreign affairs. *See, e.g. United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 318-19 (1936). These powers include the resolution of controversies between the United States and foreign nations. *See, e.g., United States v. Pink*, 315 U.S. 203, 229 (1942); *Ozanic v. United States*, 188 F. 2d 228, 231 (2nd Cir. 1951); *Avramova v. United States*, 354 F. Supp. 420, 422-23 (S.D.N.Y. 1973).

6. Defendant Iran, the garnishee, and the United States contend that in promulgating the challenged executive order, the President was acting pursuant to express statutory authority conferred upon him by the International Emergency Economic Powers Act, (IEEPA), 50 U.S.C. §§ 1701 *et seq.* As stated by Justice Jackson in his concurring opinion in *Youngstown Sheet and Tube Co. v. Swayer*, 343 U.S. 579, 635 (1952),

> When the President acts pursuant to express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right, plus all that Congress can delegate.

7. The IEEPA provides for the exercise of certain power by the President "to deal with any unusual or extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat." 50 U.S.C. § 1701(a). As noted above, President Carter did in fact declare a national emergency in his Executive Order 12170 of November 14, 1979. Section 1702(a)(1) of the IEEPA provides that, when a national emergency has been declared, the President may:

> (B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest . . .

The House Report on the IEEPA commented:

> These new authorities should be sufficiently broad and flexible to enable the President to respond as appropriate and necessary to unforeseen contingencies.

H.R. Rep. No. 459, 95th Cong., 1st Sess., 10.

8. In promulgating Executive Order 12170, President Carter acted pursuant to his powers under the IEEPA to "prevent or prohibit, any . . . transfer (or) withdrawal . . . of . . . any property in which any foreign country . . . has any interest." Similarly, in promulgating Executive Order 12281, the President was acting pursuant to the power conferred upon him by the IEEPA to "nullify (or) void . . . any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country . . . has any interest."

9. In view of the broad powers to conduct foreign affairs vested in the President by the Constitution and the specific grant of authority to the President by the Congress in the

IEEPA, this Court must conclude that the President was acting within the scope of his constitutional powers in promulgating Executive Order 12281. *See Unidyne Corp. v. Government of Iran,* No. 80-1029-A (E.D. Va., March 30, 1981); *Chas T. Main International, Inc. v. United States,* No. 81-315-C (D.Mass. March 17, 1981).

10. Plaintiffs contend that the action of the President constitutes an unconstitutional taking in violation of the Due Process Clause. The regulations issued pursuant to Executive Order 12270 permitted the attachment of Iranian property but provided that any authorization for attachments could be amended, modified, or revoked at any time. 31 C.F.R § 535.805. Inasmuch as the authorization for attachments was terminable, an attaching party acquired no compensable property interest which could be asserted if the authorization for attachment was thereafter revoked. *See Orvis v. Brownell,* 345 U.S. 183 (1953); *Acton v. United States,* 401 F. 2d 896 (9th Cir. 1968), *cert. den.,* 395 U.S. 945 (1969). Cf. *Fuller v. United States,* 409 U.S. 488, 492 (1973).

11. Plaintiffs also contend that even if Executive Order 12281 was a valid exercise of Presidential power, it cannot serve as a basis for vacating the attachment in this action since the interest of defendant Iran in the attached aircraft is, plaintiffs claim, both contested and contingent. In support of this argument they cite the regulations promulgated by the Treasury Department pursuant to Executive Order 12281.

12. Executive Order 12281 was intended to implement the agreement between Iran and the United States as expressed in the Declaration of the Government of the Democratic and Popular Republic of Algeria. Paragraph B of the General Principles of that Declaration states:

> It is the purpose of both parties . . . to terminate all litigation as between the Government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims through binding arbitration. Through the procedures provided in the Declaration . . . , the United States

> agrees to terminate all legal proceedings in United States courts, involving claims of United States persons and institutions against Iran and its state enterprises, to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration.

Section 1-102(b) of Executive Order 12281 states that any rights in Iranian property which derive from any attachment commenced after November 14, 1979 are nullified. This Order was to take effect immediately. Executive Order 12281, §1-106. As a result any attachment of Iranian property was dissolved as of January 19, 1981, regardless of whether Iran's interest in the attached property was "contingent" or "contested."

13. Vacation of the attachment is also required by the Foreign Sovereign Immunities Act of 1976, (FSIA), 28 U.S.C. §§1602 *et seq.*

14. Section 1610(d) of that Act requires that there be an *explicit* waiver by a foreign state of its immunity from attachment prior to judgment. As stated by the court in *New England Merchants National Bank v. Iran Power Generation and Transmission Co.*, 502 F. Supp. 120 (S.D.N.Y. 1980), *remanded on other grounds,* No. 80-6254 et al. (2nd Cir. April 9, 1981)

> The language of the Immunities Act could not be any clearer. It requires an unequivocal waiver of pre-judgment attachment. In contrast, with respect to the waiver of post-judgment attachment as well as execution upon a judgment, the FSIA permits the waiver to be either express or implied. Thus, it was not the result of Congressional inadvertence that the waiver of pre-judgment attachment be express. Congress recognized that pre-judgment attachment is an extraordinary and harsh remedy not to be lightly waived. Instead, only the clearest of waivers will subject a foreign state to this extraordinary remedy.

Id. at 126. This interpretation accords with the legislative history of the FSIA. The House Report on the FSIA states:

> Immunity from attachment will be denied only if the foreign state, political subdivision, agency or instrumentality has explicitly waived its immunity from attachment prior to judgment . . . [Subsection 1610(d)] provides, in cases where there has been an explicit waiver, a provisional remedy, for example to prevent assets from being dissipated or removed from the jurisdiction in order to frustrate satisfaction of judgment.

H.R. Rep. No. 1487, 94th Cong., 2nd Sess., 30, *reprinted in* [1976] U.S. Code Cong. & Ad. News 6604, 6629.

15. Article XI, paragraph 4 of the 1955 Treaty of Amity between the United States and Iran states in pertinent part:

> No enterprise of either High Contracting Party, including corporations, associations, and government agencies and instrumentalities, which is publicly owned or controlled shall, if it engages in commercial, industrial, shipping or other business activities within the territories of the other High Contracting Party, claim or enjoy, either for itself or for its property, immunity therein from taxation, suit, execution of judgment or other liability to which privately owned and controlled enterprises are subject therein.

The phrase "or other liability" in this paragraph does not in this Court's opinion constitute the kind of waiver of immunity to pre-judgment attachment contemplated by §1610(d) of the FSIA. In the Act, Congress declared that only an explicit waiver of immunity was to be effective. It is not open to the courts to find an implicit waiver to be the equivalent of an explicit one. *New England Merchants,* 502 F.Supp. at 126-27; *E-Systems, Inc. v. Islamic Republic of Iran,* 491 F.Supp. 1294, 1300 (N.D. Tex. 1980).

16. Garnishee's motion to vacate must hence be granted on the alternate ground that Iran, as a party to the 1955 Treaty of Amity, has not explicitly waived its sovereign immunity to attachments prior to judgment.

17. For the reasons stated above the writ of garnishment in this action must also be vacated.

Accordingly, garnishee's motion to vacate the writs of attachment and garnishment must be granted.

The Clerk of this Court is instructed to send uncertified copies of this Memorandum Opinion to all counsel of record.

DATED this 11 day of May, 1981.

/s/ DONALD S. VOORHEES

United States District Judge

No. 80-2035

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ELECTRONIC DATA SYSTEMS CORPORATION IRAN,
Petitioner,

v.

THE SOCIAL SECURITY ORGANIZATION OF THE GOVERNMENT OF IRAN, THE MINISTRY OF HEALTH AND WELFARE OF THE GOVERNMENT OF IRAN, THE GOVERNMENT OF IRAN, DONALD T. REGAN, THE SECRETARY OF THE TREASURY OF THE UNITED STATES OF AMERICA, AND THE UNITED STATES OF AMERICA,
Respondents.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Brief for Respondent Islamic Republic of Iran in Opposition to Petition for Writ of Certiorai and Motion for Expedited Consideration, with appendix, has been served this 3rd day of June 1981,

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June 3, 1981